IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

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:: O R D E R ::

(1) BSL Wulfing Limited Vs. State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.2053/2006.

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(2) BSL Wulfing Limited Vs. State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.2054/2006.

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Date of Order :: 19th May 2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Rajendra Mehta with Mr. R.K. Purohit, for the petitioner.
Mr. Sangeet Lodha with Ms. Aditi Lodha, for the respondents.

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BY THE COURT:

These two writ petitions directed against the similar nature orders dated 10.04.2006 (Annex. 6 in the respective writ petitions) passed by the Rajasthan Tax Board, Ajmer, ('the Tax Board' hereafter) involving common questions of law and facts were heard together and are taken up for disposal by this common order.

The petitioner has submitted two appeals under Section 85 of the Rajasthan Sales Tax Act, 1994 ('the Act' hereafter) before the Tax Board against the common order dated 27.03.2006 passed by the Deputy Commissioner (Appeals), Commercial Taxes, Bhilwara upholding the levy of penalty imposed under Section 64 of the Act in relation to two assessment years 1999-2000 and 1998-1999 respectively. By the impugned orders dated 10.04.2006, the Division Bench of the Tax Board has though proceeded to admit the respective appeals but rejected stay applications submitted by the petitioner. The impugned orders dated 10.04.2006 are similar in nature in both the cases and for reference, the order (Annexure-6) in Writ Petition No.2053/2006 could be reproduced as under:-

> "वकील अपीलार्थी श्री जे.एन.शर्मा एवं DGA श्री आर.के. अजमेरा उपस्थित । दोनों पक्षों की अपील पर प्रथम दृष्ट्या बहस सुनी गई । अपील श्रवणयोग्य होने से विचारार्थ गृहण की गई । रिकार्ड तलब हो। प्रत्यर्थी को नोटिस जारी हो।
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> तत्पश्चात् स्थगन प्रार्थना पत्र पर दोनों पक्षों की बहस सुनी गई। पत्रावली का अवलोकन किया गया। एवं प्रार्थना पत्र पर विचार किया गया । इसके उपरांत हम इस निष्कर्ष पर पहुचते है कि इस मामले में अपीलाधीन आदेश द्वारा की जाने वाली वसूली पर रोक लगाने का कोई प्रथम द्रष्ट्या कारण नहीं बनता अत:स्थगन प्रार्थना पत्र अस्वीकार किया गया। आदेश सुनाया गया।

मिसल दिनांक 27/6/2006 को DB के समक्ष पेश हो।"

Assailing the orders aforesaid, the petitioner has submitted in these writ petitions the background facts leading to the aforesaid appeals. However, in view of the short point involved in these writ petitions and the merit of the case being not the subject matter of consideration herein, suffice only to notice that the appeals aforesaid have been submitted against the common orders dated 27.03.2006 (Annex.4) passed by the Deputy Commissioner (Appeals) whereby the learned Deputy Commissioner has upheld imposition of penalty under Section 64 of the Act against the petitioner. The order imposing penalty dated 16.12.2005 (Annex.3) was passed by the Commercial Taxes Officer, Anti-Evasion, Bhilwara on the consideration that upon inspection on 31.03.2000 and 02.08.2000, it was noticed that the petitioner was a 100% export oriented unit exporting blended woolen fabric. In terms of the Notification dated 13.06.2004 issued under Section 4(2) of the Act, Government exempted from tax the sale to or purchase by such export oriented units of the raw material required by them for specific period and subject to the conditions mentioned therein. The said Notification required the unit concerned to issue declaration in Form ST-17; and in terms of the said Notification, the units having fixed capital

investment of Rs.15 crores or more were entitled to 100% exemption of tax; and the units having investment between Rs.5 crores to less than Rs.15 crores were eligible for 50% exemption. The learned Commercial Taxes Officer, Anti-Evasion found that the petitioner was entitled only to 50% exemption and yet proceeded to obtain 100% tax exemption and the attempt to obtain such illegal advantage was in direct violation of the requirements of the Act.

It appears from the statement of facts that provisional assessment was made on 11.08.2000 after such survey and inspection; and thereafter regular assessment orders were also passed on 25.09.2001 and 06.02.2001 respectively levying tax, surcharge and interest but no penalty was imposed. However, the Commissioner, Commercial Taxes issued notice to the petitioner on the basis of an application under Section 87 of the Act and by the order dated 10.08.2005 (Annex. 2) held the petitioner to have violated Section 64 of the Act by availing 100% tax exemption as against its entitlement of 50%; and directed the respondent No. 4 to take proceedings in accordance with law for imposition of penalty under the Act. The petitioner has submitted in these writ petitions that the said order dated 10.08.2005 passed by the Commissioner has been subjected to the appeal that remains pending with the Board. However,

the Commercial Taxes Officer proceeded to pass an order on 16.10.2005 pursuant to the order of the Commissioner dated 10.08.2005 and imposed penalty equal to double the amount of tax. The petitioner has submitted that while filing the appeals before the Deputy Commissioner (Appeals) it had deposited 5% of the penalty amount and has further deposited 5% of the amount on 20.03.2006. However, as noticed hereinbefore, the Deputy Commissioner rejected the appeals by his order dated 27.03.2006 and hence the petitioner preferred respective appeals before the Tax Board which have been admitted on 10.04.2006 but the prayer for interim relief has been refused.

Having heard learned counsel for the parties and having perused the material placed on record and having examined the impugned orders dated 10.04.2006, this Court is clearly of opinion that neither the orders aforesaid in relation to the prayer for interim relief could be sustained nor the approach of the learned Members of the Board could be appreciated.

From undisputed factual matrix it is evident that the matter of imposition of penalty was taken up in pursuance of the order passed by the Commissioner under Section 87 of the Act; and even the challenge to the said order under Section 87 of the Act remains pending before the Tax Board.

The petitioner has submitted the present appeals concerning the orders imposing penalty; and the learned Members of the Board finding a prima facie case worth consideration have admitted the appeals. On the facts and in the circumstances of the case, whether the interim relief as prayed for by the petitioner was to be granted or not was definitely within the jurisdiction of the Board but for that matter the stay applications could not have been rejected by way of such cursory and non-speaking orders.

This Court is constraint to observe that the impugned orders remain absolutely bereft of any basis, reasoning or consideration and, to say the least, state only the result and not the reasons. The impugned orders being absolutely non-speaking cannot be sustained and for this reason alone are required to be set aside and the stay matter is required to be remitted to the Tax Board for consideration on merits and for disposal in accordance with law with clear speaking orders.

It may be pointed out that this Court, after noticing the facts and circumstances of this case, admitted these writ petitions on 21.04.2006 and while issuing notice, ordered stay over coercive recovery proceedings against the petitioner. It, therefore, appears in the interest of justice that as the matter is being remitted to the Tax Board, till the date of appearance

before the Board, the effect of interim order passed by this Court should be permitted to continue.

As a result of the aforesaid, the writ petitions are allowed to the extent that the impugned orders dated 10.04.2006 (Annex.6) passed by the Rajasthan Tax Board, Ajmer are set aside so far relating to rejection of the stay application submitted by the petitioner. The stay matter stands remitted to the Rajasthan Tax Board, Ajmer to be considered and decided on merits in accordance with law. The parties are directed to appear before the Tax Board on 14.06.2006. The interim order passed by this Court on 21.04.2006 staying coercive recovery proceedings against the petitioner shall continue to remain in currency till 14.06.2006, the date fixed for appearance before the Tax Board and on that date it shall be permissible for the parties to make submissions in relation to the interim relief before the Tax Board. No costs.

(DINESH MAHESHWARI), J.

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